

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GARY MITCHELL,

Plaintiff,

v.

Case Number 13-11620

Honorable David M. Lawson

Magistrate Judge Patricia T. Morris

JERRY CLAYTON, MARK PTASZEK,  
SHERRY WOODS, LIEUTENANT  
CASEY, COMMANDER KUNNUTH,  
LIEUTENANT GREENFIELD,  
SERGEANT GARCIA, SERGEANT  
WILLIAMS, SERGEANT WEZNER,  
CARLA WILSON, JANE DOE, JOHN DOE,  
SERGEANT REISS, AND SERGEANT  
ARNETT,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING  
OBJECTIONS, DENYING MOTIONS FOR TEMPORARY RESTRAINING  
ORDER AND DISCOVERY, AND CONTINUING ORDER OF REFERENCE**

Plaintiff Gary Mitchell, a former inmate at the Washtenaw County Jail in Ann Arbor, Michigan, has filed a *pro se* civil rights complaint seeking money damages and injunctive relief under 42 U.S.C. § 1983. He later filed an amended complaint, followed by motions for a temporary restraining order and for discovery. The Court referred the case to Magistrate Judge Charles E. Binder for general case management. Magistrate Judge Patricia T. Morris, Judge Binder's successor, filed a report on June 5, 2014 and recommending that the plaintiff's motions be denied. The plaintiff filed timely objections, and the matter is before the Court for fresh review.

Objections to a magistrate judge's report and recommendation are reviewed *de novo*. "A judge of the court shall make a de novo determination of those portions of the report or specified

proposed findings or recommendations to which objection is made. A judge . . . may accept, reject, or modify, in whole or in part, the findings to which objection is made.” 28 U.S.C. § 636(b)(1).

As Judge Morris noted, the plaintiff seeks an injunction requiring the Washtenaw County Jail to install emergency call buttons in each cell and prevent jail personnel from issuing disciplinary charges until they prove that prisoners are afforded due process. Judge Morris recommended that the motion be denied as moot because Mr. Mitchell no longer is housed in the defendant’s facility. Judge Morris is correct. Once a prisoner leaves an institution, injunctive relief against that institution can provide the prisoner no meaningful relief. *See Kensu v. Haigh*, 87 F.3d 172, 175 (6th Cir. 1996). Mr. Mitchell argues that although he no longer is confined in that jail, other inmates remain there and share his plight. However, this plaintiff has no standing to assert the rights of others. *See Connection Dist. Co. v. Holder*, 557 F.3d 321, 345 (6th Cir. 2009).

The magistrate judge also recommended denial of the plaintiff’s discovery motion because he did not follow the proper procedure to request documents. He apparently did not serve a document request on the defendants before filing his motion. Mr. Mitchell objects to that recommendation stating that he served counsel for the defendants with a copy of his discovery motion. However, the procedure outlined in Federal Rule of Civil Procedure 34(b) requires that a party serve the document discovery request on an opposite party *before* filing a motion to compel production. It does not appear that the plaintiff followed that procedure.

The magistrate judge correctly concluded that plaintiff’s motions should be denied.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation [dkt. #41] is **ADOPTED**, and the plaintiff’s objections [dkt. #42] are **OVERRULED**.

It is further **ORDERED** that the plaintiff's motions for a temporary restraining order [dkt. #34] and for discovery [dkt. #38] are **DENIED**.

It is further **ORDERED** that the matter is referred to Magistrate Judge Patricia T. Morris under the previous reference order [dkt. #8] to ready the matter for trial, and to conduct a trial if the parties consent under 28 U.S.C. § 626(b)(1)(c).

Dated: January 6, 2015

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 6, 2015.

s/Susan Pinkowski  
SUSAN PINKOWSKI